

Response to Revised Hazardous Waste Regulation Comments

The Department of Environmental Management is providing the following responses to the comments received at the November 21, 2002 Public Hearing and during the Public Comment period, which ended December 5, 2002.

Comments were received from the following individuals. The numbers enclosed in parenthesis refer to the responses that address the comments submitted by each individual.

Mark Viera, New England Gas Co. (See Response # 1)

Gerald Gannon, Chem-Pak Corporation (See Response # 2)

Susan Prior, Clean Harbors Environmental Services, Inc. (See Response # 3, 4, 5)

Joseph Rotella/Claude Cote, Rhode Island Resource Recovery Corp. (See Response # 6, 7, 8)

Thomas Armstrong, RIDEM/Office of Strategic Planning and Policy (See Response # 6)

John Stiller/John Brunella, Phillip Services, Inc. (See Response # 4)

Thomas R. Heaton, Safety-Kleen (See Response # 3, 4, 5, 9, 10, 11)

Barry Wenskowicz, Narragansett Bay Commission (See Response # 12,13)

Brenda Pope, Lincoln Environmental (See Response # 14)

1. Public Utilities that are permitted hazardous waste transporters and transport waste from a remote location to a central location:

Utility companies that transport their own hazardous waste from a remote location to a central location are not required to ship the waste on a manifest. As a result, the fee would not apply to the initial transport for consolidation, but would only be levied on the waste that is transported on a manifest from the central collection facility by an independent transporter.

2. Hazardous Waste that is generated out-of-state and manifested to a treatment, storage and disposal facility (TSDF) in Rhode Island:

The Department acknowledges that fees on this waste stream may place an unfair and disproportionate economic impact on these Rhode Island TSDF facilities given the high percentage of business that comes from out-of-state. The proposed regulations will therefore be amended accordingly. The Department intends to more closely evaluate this issue and monitor actual fee collection rates during the next year.

3. The proposed fee regulation will increase the administrative burden imposed by state regulations and artificially increase the cost of doing business:

The Department created a stakeholder workgroup comprised of small quantity generators, large quantity generators, transporters and trade associations (the Workgroup) to evaluate various proposed options. The Department's original proposal was to charge a flat fee to the generator based on their generator classification. The Workgroup strongly favored a per unit fee based on the amount of waste generated. The Department accepted the recommendations

of the Workgroup and rather than require the generators to prepare and submit paperwork to the Department, the Workgroup (which did include transporters) felt that the transporters could collect the fee with less of an overall burden, as there were fewer of them and they are already required to make similar submissions in several other states.

4. Shipping non-hazardous waste on a manifest:

The purpose of a manifest is to track the shipment of hazardous waste. Given the costs associated with tracking manifest shipments, entering data and storing manifest information indefinitely, the Department would prefer that the manifest only be used for this purpose and will therefore apply the hazardous waste generation fee to all waste (except exempted waste) on a manifest.

5. Used Oil that is required to be shipped on a manifest in accordance with Massachusetts Regulations:

The Department will evaluate waste code issues for used oil and may incorporate appropriate language in the Used Oil Regulations, which we expect to be promulgated in 2003.

6. Household Hazardous Waste Collection Facilities:

Given the environmental benefits of separating household hazardous waste from the solid waste stream, the Department acknowledges that facilities, such as the Eco-Depot, that collect household hazardous waste should be exempt from the fee. Therefore, the Regulations will be revised accordingly.

7. The Department does not have the authority to impose the fee by this Regulation:

The amendments to the Regulations were made in accordance with the provisions of R. I. Gen. Laws 23-19.1-6, in that the revisions were drafted with input from, and review by, the regulated community including hazardous waste generators and transporters in accordance with the mandate set forth in that statute. The funds generated there from are necessary to ensure proper, adequate and sound hazardous waste management and to protect the health and safety of the public and the environment. These stakeholders affected by the revisions recognized that the fees were necessary to carry out the purposes of the Hazardous Waste Management Act, and pursuant to R. I. Gen. laws 23-19.1-6(b) under the authority of the director to carry out those provisions, the fees were established, as authorized pursuant to this statutory mandate.

8. The Environmental Response Fund is funded by appropriations from the general Assembly and money recovered from legal actions. It does not have the authority to be funded by fees as the Regulation proposes:

During the workgroup process the stakeholder group requested that the funds collected from hazardous waste generation fees be applied to the direct purposes of the Hazardous Waste Management Act. The most efficient way to accomplish this objective was to direct the generation fees into a restricted fund. "R.I. General Laws Sec. 23-19.1-23 creates the

environmental response fund. That statute provides that the "fund shall consist of such sums as the state may, from time to time, appropriate, or sums recovered by any action brought under the authority of this chapter or chapter 18.9.... (Refuse Disposal Act)" Therefore, the generation fees may be deposited into the environmental response fund, to more efficiently carry out the purposes of the Act, as authorized and required."

9. Some small businesses may elect to avoid proper management of wastes entirely when faced with paying the higher fees associated with the Department's proposal:

The Workgroup was composed of a diverse group of stakeholders including small quantity generators, large quantity generators, transporters, and trade associations. Although all of the regulated community would prefer that the hazardous waste generation fee not be implemented in Rhode Island, they recognized that the fee was necessary and is required in many other states. If a company chooses to avoid proper management of the hazardous waste that they generate then the Department will actively pursue enforcement action, which may include civil penalties of up to \$10,000 per day and possible criminal penalties.

10. The waste that is recycled and/or reused should be exempt from the fee:

The Department originally planned to incorporate incentives into the fee structure. In researching the Massachusetts model, however, it became obvious that the number of people working in the Rhode Island Hazardous Waste Facility Management Program would have to be expanded in order to register and monitor compliance with such a program if implemented in Rhode Island. Furthermore, an appropriate licensing and registration procedure would have to be developed and implemented prior to the imposition of the fee. It was the Department's conclusion that it could not be implemented given the current time and personnel constraints on the process. Also, as there is very limited data as to exactly which waste is treated or recycled, it would add another uncertainty in estimating fees that will be received. Such a graduated fee structure may be worthy of consideration as the program is fine-tuned, however, if the complexity requires more personnel to implement the program, it would mean higher fees on the regulated community which would be counter-productive.

11. Clarification is needed on the following statement:

"The hazardous waste generation fee will be calculated by excluding secondary waste from TSDFs and waste oil, however, waste oil will continue to be included on manifests until the Used Oil Regulations are promulgated."

The apparent intent of the statement is that, despite the reference to excluding waste oil from the fee, waste oil will be subject to the fee until the Used Oil Regulations are promulgated.

This interpretation is correct. As a result of the different procedure preferred by the Workgroup, the Department had to develop a mechanism to collect the full years amount during the first six months of 2003. In order to do this, the Department is requiring fees to be paid for waste oil that is manifested. The Department, however, is currently drafting Used Oil Regulations and we expect them to be promulgated in 2003. Once the Used Oil Regulations are finalized, used oil will not be considered hazardous, unless it is determined to be characteristic. Therefore, in the future, the majority of used oil will not be shipped on a

manifest and will not be subject to the hazardous waste generation fee.

12. Implementing a program for conditionally exempt small quantity generators of hazardous waste:

The current revision is very narrow in scope and only deals with the creation of the hazardous waste generation fee. This comment is beyond the scope of the current revisions, but may be considered in the next round of regulatory revisions.

13. The proposed regulations should be modified to require that all septage waste in the state of Rhode Island be shipped on a manifest:

The current revision is very narrow in scope and only deals with the creation of the hazardous waste generation fee. This comment is beyond the scope of the current revisions, but may be considered in the next round of regulatory revisions.

14. Openness and Effectiveness of the Workgroup:

The Department appreciates the comment.